

LEGISLATIVE BILL 963

Approved by the Governor August 15, 2020

Introduced by Brewer, 43; Geist, 25; Gragert, 40; Lowe, 37; McDonnell, 5; Wishart, 27; Blood, 3; Hansen, M., 26.

A BILL FOR AN ACT relating to workers' compensation; to amend section 71-7104, Reissue Revised Statutes of Nebraska, section 48-101.01, Revised Statutes Cumulative Supplement, 2018, and section 48-122, Revised Statutes Supplement, 2019; to state intent; to change provisions relating to personal injuries of first responders and frontline state employees; to provide a means of demonstrating a prima facie case of personal injury; to provide duties for the Critical Incident Stress Management Program and the Department of Health and Human Services; to require reimbursement for training as prescribed; to change provisions relating to compensation paid for burial expenses; to define and redefine terms; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 48-101.01, Revised Statutes Cumulative Supplement, 2018, is amended to read:

48-101.01 (1) The Legislature finds and declares:

(a) The occupations of first responders are recognized as stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, first responders face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival to protect the communities they serve;

(b) On any given day, first responders can be called on to make life and death decisions, witness a young child dying with the child's grief-stricken family, make a decision that will affect a community member for the rest of such person's life, or be exposed to a myriad of communicable diseases and known carcinogens;

(c) On any given day, first responders protect high-risk individuals from themselves and protect the community from such individuals;

(d) First responders are constantly at significant risk of bodily harm or physical assault while they perform their duties;

(e) Constant, cumulative exposure to horrific events make first responders uniquely susceptible to the emotional and behavioral impacts of job-related stressors;

(f) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide; and

(g) It is imperative for society to recognize occupational injuries related to post-traumatic stress and to promptly seek diagnosis and treatment without stigma. This includes recognizing that mental injury and mental illness as a result of trauma is not disordered, but is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.

(2) (1) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder or frontline state employee if such first responder or frontline state employee:

(a) Establishes, by a preponderance of the evidence, that the employee's employment conditions causing the mental injury or mental illness were extraordinary and unusual in comparison to the normal conditions of the particular employment; and

(b) Establishes, through a mental health professional by a preponderance of the evidence, the medical causation between the mental injury or mental illness and the employment conditions by medical evidence.

(3) The employee bears the burden of establishing the matters described in subsection (2) of this section by a preponderance of the evidence.

(4) Until January 1, 2028, a first responder may establish prima facie evidence of a personal injury that is a mental injury or mental illness if the first responder:

(a) Presents evidence that the first responder underwent a mental health examination by a mental health professional upon entry into such service or subsequent to such entry and before the onset of the mental injury or mental illness and such examination did not reveal the mental injury or mental illness for which the first responder seeks compensation;

(b) Presents testimony or an affidavit from a mental health professional stating the first responder suffers from a mental injury or mental illness caused by one or more events or series of events which cumulatively produced the mental injury or mental illness which brought about the need for medical attention and the interruption of employment;

(c) Presents evidence that such events or series of events arose out of and in the course of the first responder's employment; and

(d) Presents evidence that, prior to the employment conditions which caused the mental injury or mental illness, the first responder had participated in resilience training and updated the training at least annually

thereafter.

(5) (2) For purposes of this section, mental injuries and mental illness arising out of and in the course of employment unaccompanied by physical injury are not considered compensable if they result from any event or series of events which are incidental to normal employer and employee relations, including, but not limited to, personnel actions by the employer such as disciplinary actions, work evaluations, transfers, promotions, demotions, salary reviews, or terminations.

(6)(a) The Department of Health and Human Services shall reimburse a first responder for the cost of annual resilience training not reimbursed by the first responder's employer. The department shall pay reimbursement at a rate determined by the Critical Incident Stress Management Program under section 71-7104. Reimbursement shall be subject to the annual limit set by such program under section 71-7104.

(b) To obtain reimbursement under this subsection, a first responder shall submit an application to the Department of Health and Human Services on a form and in a manner prescribed by the department.

(7) The Department of Health and Human Services shall maintain and annually update records of first responders who have completed annual resilience training.

(8) (3) For purposes of this section:

(a) First responder means a sheriff, a deputy sheriff, a police officer, an officer of the Nebraska State Patrol, a volunteer or paid firefighter, or a volunteer or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

(b) Frontline state employee means an employee of the Department of Correctional Services or the Department of Health and Human Services whose duties involve regular and direct interaction with high-risk individuals;

(c) High-risk individual means an individual in state custody for whom violent or physically intimidating behavior is common, including, but not limited to, a committed offender as defined in section 83-170, a patient at a regional center as defined in section 71-911, and a juvenile committed to the Youth Rehabilitation and Treatment Center-Kearney or the Youth Rehabilitation and Treatment Center-Geneva; ~~and~~

(d) Mental health professional means:

(i) A practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act;

(ii) A practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact; or

(iii) A person licensed as an independent mental health practitioner under the Mental Health Practice Act;

(e) Resilience training means training that meets the guidelines established by the Critical Incident Stress Management Program under section 71-7104 and that teaches how to adapt to, manage, and recover from adversity, trauma, tragedy, threats, or significant sources of stress; and

(f) (d) State custody means under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency.

(9) All other provisions of the Nebraska Workers' Compensation Act apply to this section.

Sec. 2. Section 48-122, Revised Statutes Supplement, 2019, is amended to read:

48-122 (1) If death results from injuries and the deceased employee leaves one or more dependents dependent upon his or her earnings for support at the time of injury, the compensation, subject to section 48-123, shall be not more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, except that if at the time of injury the employee receives wages of less than the minimum weekly income benefit specified in section 48-121.01, then the compensation shall be the full amount of such wages per week, payable in the amount and to the persons enumerated in section 48-122.01 subject to the maximum limits specified in this section and section 48-122.03.

(2) When death results from injuries suffered in employment, if immediately prior to the accident the rate of wages was fixed by the day or hour, or by the output of the employee, the weekly wages shall be taken to be computed upon the basis of a workweek of a minimum of five days, if the wages are paid by the day, or upon the basis of a workweek of a minimum of forty hours, if the wages are paid by the hour, or upon the basis of a workweek of a minimum of five days or forty hours, whichever results in the higher weekly wage, if the wages are based on the output of the employee.

(3) Upon the death of an employee, resulting through personal injuries as defined in section 48-151, whether or not there are dependents entitled to compensation, the reasonable expenses of burial, not exceeding ~~ten~~ eleven thousand dollars, without deduction of any amount previously paid or to be paid for compensation or for medical expenses, shall be paid to his or her dependents, or if there are no dependents, then to his or her personal representative. Beginning in 2023, the Nebraska Workers' Compensation Court shall annually adjust the dollar limitation in this subsection. The adjusted limitation shall be equal to the then current limitation adjusted by the greater of one percent or the percentage change, for the preceding year, in the

Consumer Price Index for All Urban Consumers, as prepared by the United States Department of Labor, Bureau of Labor Statistics. Any adjustment shall be effective on July 1. The adjustment shall not exceed two and three-quarters percent per annum. If the amount so adjusted is not a multiple of one hundred dollars, the amount shall be rounded to the nearest multiple of one hundred dollars.

(4) Compensation under the Nebraska Workers' Compensation Act to alien dependents who are not residents of the United States shall be the same in amount as is provided in each case for residents, except that at any time within one year after the death of the injured employee the employer may at his or her option commute all future installments of compensation to be paid to such alien dependents. The amount of the commuted payment shall be determined as provided in section 48-138.

(5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this section, the consular officer of the nation of which the employee, whose injury results in death, is a citizen shall be regarded as the sole legal representative of any alien dependents of the employee residing outside of the United States and representing the nationality of the employee.

(ii) At any time prior to the final settlement, a nonresident alien dependent may file with the Nebraska Workers' Compensation Court a power of attorney designating any suitable person residing in this state to act as attorney in fact in proceedings under the Nebraska Workers' Compensation Act. If the compensation court determines that the interests of the nonresident alien dependent will be better served by such person than by the consular officer, the compensation court shall appoint such person to act as attorney in fact in such proceedings. In making such determination the court shall consider, among other things, whether a consular officer's jurisdiction includes Nebraska and the responsiveness of the consular officer to attempts made by an attorney representing the employee to engage such consular officer in the proceedings.

(b) Such consular officer or appointed person shall have in behalf of such nonresident alien dependents the exclusive right to institute proceedings for, adjust, and settle all claims for compensation provided by the Nebraska Workers' Compensation Act and to receive the distribution to such nonresident alien dependents of all compensation arising thereunder.

(c) A person appointed under subdivision (5)(a)(ii) of this section shall furnish a bond satisfactory to the compensation court conditioned upon the proper application of any money received as compensation under the Nebraska Workers' Compensation Act. Before the bond is discharged, such appointed person shall file with the compensation court a verified account of receipts and disbursements of such money.

(d) For purposes of this section, consular officer means a consul general, vice consul general, or vice consul or the representative of any such official residing within the State of Nebraska.

(6) The changes made to this section by Laws 2019, LB418, apply to cases under the Nebraska Workers' Compensation Act that are pending on September 1, 2019, and to cases filed on or after such date.

Sec. 3. Section 71-7104, Reissue Revised Statutes of Nebraska, is amended to read:

71-7104 There is hereby created the Critical Incident Stress Management Program. The focus of the program shall be to minimize the harmful effects of critical incident stress for emergency service personnel, with a high priority on confidentiality and respect for the individuals involved. The program shall:

(1) Provide a stress management session to emergency service personnel who appropriately request such assistance in an effort to address critical incident stress;

(2) Assist in providing the emotional and educational support necessary to ensure optimal functioning of emergency service personnel;

(3) Conduct preincident educational programs to acquaint emergency service personnel with stress management techniques;

(4) Promote interagency cooperation; ~~and~~

(5) Provide an organized statewide response to the emotional needs of emergency service personnel impacted by critical incidents; ~~and~~

(6) Develop guidelines for resilience training for first responders under section 48-101.01;

(7) Set reimbursement rates for resilience training under section 48-101.01; and

(8) Set an annual limit on the hours or quantity of resilience training for which reimbursement is required under section 48-101.01.

Sec. 4. This act becomes operative on July 1, 2021.

Sec. 5. Original section 71-7104, Reissue Revised Statutes of Nebraska, section 48-101.01, Revised Statutes Cumulative Supplement, 2018, and section 48-122, Revised Statutes Supplement, 2019, are repealed.